

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 78/AIL/Lab./J/2011, dated 5th April 2011)

NOTIFICATION

Whereas, the Award in I. D. No. 14/2005, dated 21-12-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Unicorn (Bangalore) Private Limited, Puducherry and Thiru. S. Sivarasu over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,

Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court.

*Tuesday, the 21st day of December 2010***I. D. No. 14/2005**

S. Sivarasu,
37, Perambai Road, Arasur,
Villianur Post,
Pondicherry.

.. Petitioner

Versus

The Managing Partner,
Unicorn (Bangalore) Private Limited,
Mettupalayam, Pondicherry.

.. Respondent

This industrial dispute coming on 20-12-2010 for final hearing before me in the presence of Thiru R.S. Zivanandam, advocate for the petitioner and Thiruvalargal K.V. Shanmuganathan and L. Vivekananthan and M/s. V. Vijayanthimala, advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry vide G.O. Rt. No. 2/2005/Lab./J, dated 3-1-2005 for adjudicating the following :—

1. Whether the non-employment of Thiru S. Sivarasu by the management of M/s. Unicorn (Bangalore) Private Limited, Pondicherry is justified or not?

2. To what relief, he is entitled to?

3. To compute the relief, if any, awarded in terms of money if it can be so computed?

2. The petitioner, in his claim statement, has averred as follows:

The petitioner is an Executive Committee Member and an active functionary of the unit of the Industrial Estate Workers Union functioning in the respondent industry. The petitioner was Grade-I Operator of the respondent industry for the past ten years with satisfactory and unblemished service records.

While so, the respondent management had derecognised the industrial estate workers union in which the petitioner is a member. Consequently, the members of the union to which the petitioner belongs, were threatened and insisted by the respondent to leave the trade union activities. As part of the series of threats unleashed by the respondent management, the members of the union to which the petitioner belongs, were verbally denied employment. The dismissed workers were on continuous hunger fast in front of the premises of the respondent industry obtaining prior permission from the Police Department and the petitioner also one among them.

In these circumstances, the petitioner received an order, dated 13-2-2004 from the respondent dismissing him from service for the charge of physically preventing a contract worker from entering the factory premises of the respondent management. The order of dismissal was given without holding any domestic enquiry or issuing show cause notice, which is against natural justice. No such incident as alleged by the respondent management had taken place. Aggrieved by the dismissal order of the respondent, the petitioner raised an industrial dispute before the Labour Officer (Conciliation) over the wrongful dismissal by the respondent.

3. In the counter statement, the respondent has stated as follows :—

The petitioner had unauthorisedly absented himself from work for 46 days from January 2002 to December 2002. Again he had absented himself from work from January 2003 to May 2003. In this regard,

a show cause notice was issued on 5-6-2003. However, the petitioner refused to receive the same. By absents unauthorisedly, the petitioner has caused dislocation of work. As a result, the respondent had suffered loss to the tune of ₹ 1,60,506. The respondent issued a show cause notice in this regard. However, the petitioner has refused to receive the same.

On 29-1-2004 during the third shift, at about 5.00 a.m. the petitioner was found sleeping while on duty by the Manager of the respondent. The petitioner was castigated by the Manager in the presence of Shift Supervisor then and there. In this regard, a show cause memo. was issued to the petitioner. However, he has not only refused to receive the same but also left the work spot unauthorisedly along with the other workmen, who were in the third shift. This act of the petitioner has adversely affected the management. Hence, a show cause notice was issued to the petitioner on 2-2-2004, which was also refused to receive the same by the petitioner. Therefore, the past record of the petitioner is not clean.

Further the petitioner along with his colleagues, indulged in the misconduct of riotous and unruly behaviour in front of main gate of the petitioner unit at about 8.15 a.m. on 9-2-2004 and prevented a contract worker from entering the company premises. Again, the petitioner accompanied by his colleagues, attempted to assault the Joint Managing Director of the respondent. They also abused him using filthy language. In this regard, the petitioner was placed under suspension on 10-2-2004. When the respondent attempted to serve the suspension order on the petitioner on 10-2-2004, he had refused to receive the same. Having left with no other go, the petitioner was dismissed from service for his riotous and unruly behaviour. The misconduct committed by the petitioner is grave one. It has adversely affected the discipline and control among the work force. Hence, they prayed for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and no documents were marked. On the side of the respondent, RW.1 was examined and Ex. R1 to Ex. R9 were marked.

5. The point for determination is:

Whether the petitioner can be considered for reinstatement in service with back wages and other benefits?

6. On the point :

It is an admitted fact that the petitioner was an employee in the respondent company. The main contention of the petitioner is that he was an Executive Committee Member in the union of the Industrial Estate

Workers functioning in the respondent company and since he was involved in the union activities, he along with some other workers were denied employment and the dismissed workers were in continuous hunger fasting in front of the premises of the respondent company and in these circumstances, he received an order, dated 13-2-2004 dismissing him from service for the charge of physically preventing the contract workers from entering into the factory premises. In order to prove the same, the petitioner was examined as PW.1 and PW.1 in his evidence has deposed the said version, but no documents were marked on his side.

7. *Per contra*, the contention of the respondent is that the petitioner had unauthorisedly absent himself from work for 46 days from January 2002 to December 2002 and again he had absented himself from work from January 2003 to May 2003 and hence, a show cause notice was issued on 5-6-2003 to the petitioner, but he had refused to receive the same. The respondent has further submitted that due to the said unauthorised absent of the petitioner, the respondent had suffered a loss to the tune of ₹ 1,60,506 and in this regard, a show cause notice was also issued to the petitioner, but the same was also not received by him. On the side of the respondent, the learned counsel for the respondent relied upon the following decisions :-

2005(2) L.LN. 661 :-

“Misconduct - Insubordination - Acts subversive of discipline - Punishment of dismissal from service-Validity -Workman charged for misconduct of gheraoing senior officers of company for long hours-During gherao one of the officers received injuries-Evidence of management witness and documentary evidence established chare against workman - Order of dismissal from service not interfered with.”

AIR 2005 S.C.1993 :-

“Misconduct - Order of punishment - Reduction - In absence of factors like punishment being disproportionate or any other mitigating circumstances or past conduct of workman -Labour Court cannot by way of sympathy alone exercise power under S.11 -A and reduce punishment.”

2006(1) L.LN.874 :-

“Domestic enquiry - Principles of natural justice - Things admitted, held, need not be proved - Further, in this case, besides admission of abusing superior in filthy language witnesses were also examined for proving the charges.”

8. In order to prove the contention of the respondent, Ex. R1 to Ex. R9 were marked. Ex. R1 is a show cause notice, dated 5-6-2003 wherein the petitioner was advised to give the explanation for unauthorised

absent. Ex. R2 is the attendance particulars of the petitioner, which would show that the petitioner has taken leave for 116 days from January 2002 to May 2003. Ex.R3 is the particulars of production loss in the respondent company for the period from 1-1-2003 to 31-5-2003. But the petitioner has denied Ex.R1 to Ex.R3 and he has stated in his cross-examination that he has not taken leave for 46 days from January 2002 to December 2002 and January 2003 to May 2003. When the petitioner has denied about the unauthorised absent, it is the duty of the respondent to examine any of their employees before this court to prove the misconduct of the petitioner. But except RW. 1, no other witnesses were examined on the side of the respondent. Ex. R2 can also not be taken into consideration, since it is not supported by the attendance register maintained by the respondent company. Further when the petitioner has refused to receive Ex. R1, it is for the respondent who has to send the same through a registered post with acknowledgment due and the said acknowledgment card has to be filed before this court to prove that the petitioner was refused to receive Ex.R1. But in this case, Ex.R1 has not been sent to the petitioner through the registered post.

9. According to the respondent, the petitioner was unauthorised absent for 46 days from January 2002 to December 2002. But during the said period, no action was taken against the petitioner for the said unauthorised absent and the show cause notice was issued only on 5-6-2003. There is no plausible explanation on the side of the respondent for the same. Hence, the contention of the respondent that the petitioner was unauthorisedly absent for 46 days from January 2002 to December 2002 and again from January 2003 to May 2003 is not properly proved.

10. It is the further contention of the respondent that the petitioner was sleeping while he was on duty on 29-1-2004 and hence a show cause notice was issued on 2-2-2004 to him calling for explanation, but the petitioner has refused to receive the same.

11. In order to prove the same, the respondent has marked the show cause notices, dated 31-1-2004 as Ex. R4 and dated 2-2-2004 as Ex. R5, Ex. R6 is the apology letter submitted by the petitioner to the respondent management admitting the misconduct of sleeping while on duty on 29-1-2004 during the third shift. Though PW.1 during his cross-examination has admitted about Ex. R6, he denied the said misconduct of sleeping while he was on duty on the said day. As per Ex. R4, the said incident was noticed by one M.S. Vasan, who was the shift in charge on that day. But the said Vasan has not been examined as a witness before this court.

12. The learned counsel for the petitioner would submit that the order of dismissal was given without holding any domestic enquiry or issuing show cause notice is against the law of labour legislations and principles of natural justice.

13. On the other hand, the learned counsel for the respondent would submit that the petitioner accompanied by his colleagues, attempted to assault the Joint Managing Director of the respondent and they also abused him using filthy language and hence the petitioner was placed under suspension on 10-2-2004 and when the respondent attempted to serve the suspension order on the petitioner on 10-2-2004, he had refused to receive the same and having left with no other go, the petitioner was dismissed from service for his riotous and unruly behaviour. The learned counsel for the respondent would further submit that since the petitioner had indulged in grave misconduct against the Joint Managing Director of the respondent, the respondent could not hold domestic enquiry.

14. On perusal of records, it is seen that the respondent has not conducted any domestic enquiry for the misconducts of the petitioner, as alleged by the respondent. In this case, the respondent has not proved any misconducts of the petitioner through oral or documentary evidence. According to the respondent, the petitioner along with some others was attempted to assault the Joint Managing Director and they also used filthy language against him. But in this regard, though a police complaint Ex. R7 was filed against the petitioner and others, no F.I.R. was registered against them.

15. The respondent being an employer, has to safeguard the interest of their employees. When the petitioner has committed misconducts of sleeping while he was on duty and attempted to assault the Joint Managing Director, they have to conduct the domestic enquiry and in the enquiry, opportunity has to be given to the petitioner to peruse the records and cross-examine the management witnesses and after complying all the formalities only, they have to take action against him. In this case, the respondent, without conducting the domestic enquiry, has taking action against the petitioner directly by dismissing him from service and hence the respondent has violated the principles of natural justice. Hence, this court comes to a conclusion that the non-employment of the petitioner from service is not justified. In this case, no evidence has been produced against the petitioner for the alleged misconducts, for which he has been dismissed from service. But it does not mean that the petitioner has not involved to commit the said misconducts. Considering the family circumstances of the petitioner, who is jobless

from 2004 without earning he has to be reinstated without back wages and continuity of service in the interest of justice. Hence, considering the facts and circumstances of the case, the petitioner is ordered to be reinstated but not entitled for continuity of service and back wages. Accordingly, this point is answered.

14. In the result, the industrial dispute is partly allowed and the respondent management is hereby directed to reinstate the petitioner into service. However, he is not entitled for continuity of service and back wages. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 21st day of December 2010.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

List of witnesses examined for the petitioner :

PW.1 — 25-3-2010 Sivarasu

List of witnesses examined for the respondent :

RW.1 — 23-9-2010 P. Gnanagurupatham

List of exhibits marked for the petitioner : Nil.

List of exhibits marked for the respondent :

Ex. R1 — Memo. dated 5-6-2003 issued by the management to the petitioner.

Ex. R2 — Attendance register period from January 2002 to May 2003.

Ex. R3 — Loss of pay statement

Ex. R4 — Memo. dated 31-1-2004 issued by the management to the petitioner.

Ex. R5 — Memo. dated 2-2-2004 issued by the management to the petitioner.

Ex. R6 — Letter, dated 4-2-2004 submitted by the petitioner.

Ex. R7 — Petition, dated 9-2-2004 issued by the management to Sub-Inspector of Police.

Ex. R8 — Suspension order, dated 10-2-2004 issued by the management.

Ex. R9 — Dismissal order, dated 13-2-2004.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

GOVERNMENT OF PUDUCHERRY
DEPARTMENT OF INDUSTRIAL DEVELOPMENT (PORT)

(G. O. Ms. No. 1, dated 30th March 2011)

ORDER

In continuation to the extension of the provisions of the Indian Ports Act, 1908 to the Karaikal Port *vide* G. O. Ms. No. 1, dated 17-3-2005 issued by this department and the orders issued *vide* G. O. Ms. No.2, dated 21-1-2006 issued by this department approving the execution of Concession Agreement between Government of Puducherry and M/s. Marg Constructions Limited, Chennai and the concessionaire having developed Phase-I of the Karaikal Port in terms of the Concession Agreement, dated 25-1-2006 as duly certified by the expert appointed under the said Concession Agreement, in the light of the request of Karaikal Port Private Limited made *vide* Letter No. KPPL/COD/GOP/5/2009, dated 13-1-2011 of M/s. Karaikal Port Private Limited for declaring the commercial operations date for Phase-I of the Karaikal Port in terms of the said Concession Agreement, the approval of the Lieutenant-Governor, Puducherry is hereby accorded declaring 1st June 2009 as the date on which the commercial operations shall be deemed to have been commenced in respect of Phase-I of Karaikal Port.

(By order of the Lieutenant-Governor)

S. ALPHONSE,
Under Secretary to Government.

GOVERNMENT OF PUDUCHERRY
DEPARTMENT OF INDUSTRIAL DEVELOPMENT (PORT)

(G.O. Ms. No. 2, dated 30th March 2011)

NOTIFICATION

In exercise of the powers conferred by sub-section (1) of section 7 of the Indian Ports Act, 1908 (Central Act 15 of 1908), the Lieutenant-Governor, Puducherry hereby appoint M/s. Marg Constructions Limited, Chennai, represented by Karaikal Port Private Limited, Karaikal, a company incorporated under the Companies Act, 1956 (Central Act 1 of 1956) as Conservator of the Karaikal Port in Union territory of Puducherry subject to the said Act until further orders.

(By order of the Lieutenant-Governor)

S. ALPHONSE,
Under Secretary to Government.